

PATENT

Applicant: Robert F. Wilson et al.
Serial No.: 10/613,121
Filed: July 3, 2003
Title: **LEAFLET REINFORCEMENT FOR
REGURGITANT VALVES**
Examiner: Yabut, Diane D.
Group Art Unit: 3734
Confirmation No.: 7183
Atty. Docket No.: 21913-301

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**STATEMENT ACCOMPANYING PETITION TO REVIVE
UNINTENTIONALLY ABANDONED PATENT APPLICATION
AND
REQUEST FOR REFUND**

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir or Madam:

Applicant submits this Statement in connection with the "Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed concurrently herewith in the above-captioned patent application, and respectfully requests a refund of the fee submitted in connection with the Petition for the reasons set forth below.

A Final Office Action issued in this application on December 21, 2009. The six-month response deadline was thus June 21, 2010. On June 10, 2010, a telephonic interview occurred between David McKinley, attorney for the Applicant, and the Examiner. During this interview, an agreement was reached on an amendment that would overcome the prior art cited. The Examiner agreed to enter an Examiner Amendment to put the claims in condition for allowance but said she was going to do a quick search first and call David McKinley the following week with the results.

However, instead of conducting a quick search, issuing an Examiner's Amendment and allowing the case as she said she intended to do, the Examiner sent an email to the undersigned on June 15, 2010, saying:

We spoke last week regarding this case and I said I would follow up with you tomorrow. However, it looks like I will need more time to update the search and it is an especially busy week (the end of the quarter). Since the due date is 6/21, I would suggest submitting an after final amendment and we can set up another telephonic interview if necessary when it appears on my docket to put it in condition for allowance.

Email dated June 15, 2010 from Examiner Diane D. Yabut (Diane.Yabut@uspto.gov) to David J. McKinley, Esq. (dmckinley@inskeeplaw.com).

David McKinley then called the Examiner to ask about whether an RCE should also be filed to prevent the case from going abandoned. The Examiner said that since she was directing the response, there was no need for an RCE and the after-final amendment would be sufficient to meet the response requirement.

Accordingly, an Amendment After Final Rejection was filed on June 18, 2010, with a three-month Extension of Time, but without an RCE, in expectation that the amendments would lead to immediate allowance, in view of the Examiner's email and telephone remarks to the undersigned.

However, after the six-month deadline had passed, on July 2, 2010, the Examiner issued an Advisory Action, saying that the very amendments which had been previously discussed with her now raised new matters and could not be entered. Apparently without realizing that the final deadline had passed, she emailed again on July 8, 2010 saying that an RCE could be filed. When we queried how we could do this since the final deadline had passed, she said that the case was abandoned and that we had to file a Petition to Revive.

CONCLUSION

In view of the foregoing, it is submitted that Applicant should not be held responsible for the abandonment of the present case. Applicant has acted in accordance with express instructions of the Examiner, in expectation of immediate allowance of the case. Had the Examiner not given the instructions and made the representations she did, Applicant would certainly have filed an RCE to prevent abandonment.


Applicant therefore respectfully requests, in addition to reinstatement of this application, a refund of the Petition fee of \$1,620.00.

If for any reason direct communication with Applicants' attorney would serve to facilitate a favorable decision on this Petition, the Petitions Officer is cordially urged to call the undersigned attorney at the below listed telephone number.

The Commissioner is authorized to charge any additional fee which may be required in connection with this Amendment to deposit account No. 50-2809.

Respectfully submitted,

Dated: July 28, 2010



David J. McKinley
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